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Brian Fabian, Josh Raskin, Ming Wu, Istra Holdings Inc.,
1564476 Ontario Limited, and Slickcash.com
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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN JOSE DIVISION

13 FACEBOOK, INC.,

14 Plaintiff,

15 v.

16
17 BRIAN FABIAN, JOSH RASKIN, MING WU, and
JOHN DOES 4-10, individuals; and ISTRA
18 HOLDINGS INC., SLICKCASH.COM, 1564476
ONTARIO LIMITED, and JOHN DOES 14-20,
19 corporations,

20 Defendants.
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Case No. C-07-03404 HRL

**JOINT CASE MANAGEMENT
CONFERENCE STATEMENT**

Date: March 4, 2008

Time: 1:30 p.m.

Crtn: 2, 5th Fl.

Judge: Magistrate Judge Howard R. Lloyd

First Amended Complaint Filed:
December 12, 2007

1 Plaintiff FaceBook, Inc. and Defendants Brian Fabian, Ming Wu, Josh Raskin, Istra Holdings
2 Inc., 1564476 Ontario Limited, and Slickcash.com (collectively “Defendants”), jointly submit this
3 Case Management Conference Statement.

4 **A. Jurisdiction and Service**

5 Plaintiff submits that jurisdiction is proper in this Court, under 28 U.S.C. § 1331, because the
6 action alleges violations of the Computer Fraud and Abuse Act, 18 U.S.C. § 1030, and that venue is
7 proper under 28 U.S.C. § 1391(b)(2) and (d), or in the alternative § 1391(b)(1) or (3).

8 Defendants believe that there may be a lack of both subject matter jurisdiction and/or
9 personal jurisdiction and do not concede jurisdiction. Defendants reserved the right to challenge
10 jurisdiction in their Answer and will promptly do so upon completion of initial discovery and
11 investigation.

12 All defendants have been served (in December 2007 and January 2008) and answered the
13 Complaint on February 1, 2008.

14 **B. Factual Background**

15 Plaintiff alleges that sometime between or before June 1, 2007 and June 15, 2007, the
16 Defendants, acting individually and in concert, used a remote server to access Facebook’s Web site
17 hundreds of thousands of times, and using an unauthorized automated script designed to circumvent
18 Facebook's normal security defenses, directed Facebook's computers to verify and obtain
19 information about Facebook's users, and to profit from that information. The Defendants continued
20 to adapt their approach to accessing Facebook's Web site in the manner described above despite the
21 efforts of Facebook's security staff to block the Defendants' actions.

22 Defendants are Canadian residents and entities who deny generally the allegations of
23 improper conduct alleged by Plaintiff.

24 **C. Legal Issues**

25 Whether Defendants’ conduct violated the Computer Fraud and Abuse Act; the California
26 Comprehensive Computer Data Access and Fraud Act; or FaceBook’s Terms and Conditions.

27 Whether Defendants intentionally accessed FaceBook’s Web site without authorization.

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1 Whether Defendants' conduct caused damage in excess of the statutory minimum or any
2 damages at all as defined by the relevant statutes.

3 The content of FaceBook's terms and conditions and whether FaceBook's terms and
4 conditions are valid and enforceable.

5 Whether Defendants are subject to the personal jurisdiction of this Court.

6 **D. Motions**

7 The Defendants intend to evaluate whether the Court has personal jurisdiction over these
8 defendants, and may potentially move to dismiss for lack of personal jurisdiction. Further,
9 Defendants may move to compel arbitration pursuant to the terms of the contract upon which
10 Plaintiff sues.

11 Other motions are uncertain at this time.

12 **E. Amendment of Pleadings**

13 No amendments to the pleadings are presently contemplated.

14 **F. Evidence Preservation**

15 Plaintiffs, Defendants, and third party Accretive Technology Group have been advised by
16 their counsel to preserve all relevant evidence, including electronically stored evidence, if any. The
17 parties have agreed to postpone detailed discussion of discovery-related issues, including electronic
18 discovery, pending the results of their ongoing settlement discussions. See section G, below.

19 **G. Disclosures**

20 The parties have not yet made their initial disclosures. The parties are in extensive
21 negotiations for settlement of this matter and thus desire to refrain from the expense and burden of
22 initial disclosures and discovery at this time. The parties agree that if no agreement is reached, the
23 parties shall make initial disclosures pursuant to Rule 26 on or before April 4, 2008.

24 **H. Discovery**

25 The parties see no reason to deviate from the Federal Rules of Civil Procedure with respect to
26 discovery. See also section G, supra.

27 **I. Related Cases**

28 None.

1 **J. Relief**

2 Injunctive and monetary relief is sought in the Complaint. Plaintiff's investigation regarding
3 monetary damages is ongoing, and the amount of such damages will be proven at trial.

4 Defendants do not believe that Plaintiff is entitled to relief and require additional discovery
5 and investigation to determine the scope of damages, if any.

6 **K. Settlement and ADR**

7 The parties are in extensive negotiations to settle this matter, including potential cooperation
8 from the Defendants with Plaintiff's investigation of this matter. Therefore the parties desire to
9 continue the deadline for the required ADR flings until April 25, 2008.

10 **L. Consent to Magistrate Judge For All Purposes**

11 The Parties consent to the Magistrate Judge for all purposes.

12 **M. Other References**

13 Not applicable.

14 **N. Narrowing of Issues**

15 At this time, it is too early to evaluate and determine all the issues and/or any narrowing of
16 the issues.

17 **O. Expedited Schedule**

18 The parties do not believe that the Court should impose an expedited schedule for this action.
19 Defendants were served in December 2007 and January 2008, and have only responded to the First
20 Amended Complaint on February 1, 2008. No discovery has taken place and the parties are in
21 extended negotiations.

22 **P. Scheduling**

23 In the event that the parties are unable to reach settlement, the parties recommend that the
24 Court set the following schedule:

25 Fact Discovery Cut-Off: June 27, 2008

26 Expert Reports: August 1, 2008

27 Expert Rebuttal Reports: August 29, 2008

28 Expert Discovery Cut-off: September 26, 2008

1 Last day for hearings on dispositive motions: November 25, 2008

2 Pre-Trial Conference: December 22, 2008

3 Trial: January 12, 2009

4 **Q. Trial**

5 The parties have each requested a Jury Trial. The expected length of trial is 5-7 days.

6 **R. Disclosures of Non-Party Interested Entities or Persons**

7 Defendants have filed a "Certificate of Interested Entities or Persons," pursuant to Civil L.R.
8 3-16, stating that other than the named parties, there is no such interest to report.

9 **S. Other Matters**

10 None at the present time.

11
12 Dated: February 26, 2008

DUANE MORRIS LLP

13 By: /s/ Gregory G. Iskander
14 Gregory G. Iskander
Attorneys for Defendants

15 Dated: February 26, 2008

PERKINS COIE LLP

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17 By: /s/ David Chiappetta
18 David Chiappetta
Attorneys for Plaintiff

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